IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 26 of 2003
and
CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 27 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF CENTRAL EXCISE

Versus

SHREE KHODAL STEELS LTD.

Appearance:
1. CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No. 26 of 2003
MR DN PATEL for Petitioner No. 1
MR MK VAKHARIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 19/01/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In these applications, the Commissioner of

Central Excise & Customs, Rajkot has sought for a reference of the following questions :-

"(1) In the event of change in any of the parameters of a hot re-rolling mill as prescribed in sub-rule 2 of Rule 4 of the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997, the annual capacity will still not be determined in terms of formula as prescribed in the sub-rule 3 of Rule 3 of the HRSMACD Rules ?

(2) When the annual capacity so re-determined under sub-rule 3 of the Rule 3 of the HRSMACD Rules 1997 is still less than annual production of 1996-97, would not provisions of Rule 5 of the HRSMACD RULES 1997 come into operation ?"

2. An identical controversy came up for consideration of this Court in CECG Application No. 41 of 2001 and in another group of applications being CECG Application Nos. 6 to 16 of 2002. This Court rejected those applications, inter alia, observing that on going through the order of the Tribunal, no question of law can be said to be arising from it which required a reference to the High Court for its opinion. Similarly, CECG Application Nos. 6 to 16 of 2002 also came to be dismissed by this Court's order dated 11.1.2002. Again the controversy was examined by this Court in Special Civil Application No. 5623 of 2002 and in the judgment dated 30.7.2002, this Court approved the following reasoning and conclusion of the Larger Bench of CEGAT in Sawan Mal Shibumal Steel Rolling Mills vs. CCE, Chandigarh, 2001 (42) Revenue Law Times 75 :-

"Re-determination is occasioned by changes made in the installed machinery. When changes in machinery cause reduction in the annual capacity of production, fixing the annual capacity of production based on the actual production of a previous year, when the capacity for production of the machinery was higher, would be highly unreasonable and it would amount to comparing the uncomparables. The application of the deeming provision contained in Rule 5 in such a case would be grossly unjust. It would be also impermissible, as such a determination would be without any regard to the annual capacity of

production, the basis for the compounded levy. However, the situation is quite different when the modification of the machinery is to augment the annual capacity of production.

9. From a perusal of our previous decisions, we find that all of them relate to cases involving reduction of capacity of production on account of change in the machinery. In those circumstances, the Tribunal held that Rule 5 had no application to those cases. Those decisions cannot constitute the basis for the contention that Rule 5 is wholly inapplicable irrespective of whether the change in machinery is for reduction in the capacity, to retain the same capacity or augmenting the capacity of production. When the capacity remains the same or the capacity is increased on account of change of machinery, no unintended hardship is visited upon tax payers by the application of Rule 5. However, when change of machinery leads to reduction of annual capacity, Rule 5 would not apply.

10. In the light of the above discussions, we answer the reference by stating that Rule 5 would be relevant and applicable in all cases where there is no change in the annual capacity of production or the annual capacity of production is augmented on account of change in the machinery of production. However, it would have no application when change in machinery leads to reduction in the annual capacity of production, when the same is computed according to the parameters mentioned in Rule 3 of the Hot Rolling Steel Mills Annual Capacity Determination Rules, 1997."

3. Accordingly, these applications also deserve to be dismissed and are hereby dismissed.

Rule is discharged with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-